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| HAND, MELANIE JO | | | | |
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEONIDAS DIAMANTOPOULOS

Appeal 2009-010660
Application 10/506,744
Technology Center 3700

Before LINDA E. HORNER, JOHN C. KERINS, and STEVEN D.A.
McCARTHY, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Leonidas Diamantopoulos (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 15-29, the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We REVERSE.

THE INVENTION

Claim 15, reproduced below, is illustrative of Appellant's invention:

15. A catheter comprising at least one resiliently biased projection and at least one displacement detector which generates a signal which varies as a function of radial displacement of the at least one resiliently biased projection relative to the longitudinal axis of the catheter.

THE REJECTIONS

The Examiner has rejected claims 15-17, 19, 20, and 24-29 under 35 U.S.C. § 102(a) as being anticipated by Diamantopoulos (WO 01/74263 A1, published October 11, 2001). The Examiner has also rejected claims 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Diamantopoulos, and claims 21-23 as being unpatentable over Diamantopoulos in view of Acker (US 5,833,608, issued November 10, 1998).

ISSUES

Does the Diamantopoulos reference disclose a displacement detector that generates a signal which varies as a function of radial displacement of a resiliently biased projection?

ANALYSIS

The Examiner found, with respect to claim 15, that Diamantopoulos discloses “at least one detector in the form of thermal sensors 10 that generate a signal that creates temperature data and varies as a function of radial displacement (e.g. due to the presence of a plaque on the vessel wall)...” (Ans. 3). Appellant counters that the signal constituting temperature data in Diamantopoulos does not vary as a function of the radial displacement of the resiliently biased projections, but rather it is merely temperature data that is included in the signal without regard to the radial displacement of the projections. (Appeal Br. 7). In response, the Examiner appears to be taking the position that different temperature readings will be obtained and transmitted at different radial coordinates, and thus the signal containing the data from the temperature reading will vary as a function of the radial displacement of the sensor. (Ans. 7-8).

The Examiner’s position would be sustainable only if there were also a direct correlation between measured temperature (which is all that the Diamantopoulos device measures) and the size (diameter) of the opening through the blood vessel (which will dictate the radial displacement of the projection). While the Examiner noted that Diamantopoulos discloses that elevated temperatures may be present in areas in which plaque is attached to the wall of a blood vessel (Ans. 7), Diamantopoulos does not disclose that the temperature of the artery wall varies in any particular and defined manner with the thickness of the plaque. Appellant correctly states that, “while the sensor in Diamantopoulos may generate a signal that varies with radial displacement, [the signal] certainly does not vary as a function of radial displacement.” (App. Br. 5).

The additional findings and rationale employed by the Examiner in rejecting dependent claims 18 and 20 as unpatentable over Diamantopoulos, and in rejecting dependent claims 21-23 over Diamantopoulos and Acker, do not address the absence of a disclosure in Diamantopoulos of a displacement detector that generates a signal that varies as *a function of* the radial displacement of the resiliently biased projections employed in that device.

The rejections of claims 15-29 will thus not be sustained.

CONCLUSIONS

The Diamantopoulos reference does not disclose or render obvious a displacement detector that generates a signal which varies as a function of the radial displacement of at least one resiliently biased detector. The Acker patent does not, in combination with the teachings of Diamantopoulos, render obvious such a displacement detector.

DECISION

The decision of the Examiner to reject claims 15-29 is reversed.

REVERSED

mls

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